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INTERNATIONAL PLATFORM
OF JURISTS
FOR EAST TIMOR

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His Excellency Boutros Boutros-Ghali
Secretary-General of the United Nations
Fax (1) 212 963 4037

Leiden, 20 November 1992

Excellency,

We write in response to the arrest in Dili this morning of Xanana Gusmão, the leader of the East Timorese resistance, by the Indonesian occupation army. We wish to convey our deep concern to you regarding his safety and hereby urge you to intervene and exercise your influence in order to obtain his release.

It is our contention that the IV Geneva Convention of 1949 applies to Indonesia's occupation of East Timor, under the second paragraph of article 2:

> "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

We are supported in this view by the persuasive ICRC interpretation of the article:

> "Where a territory under the authority of one of the parties passes under the authority of an opposing party there is 'occupation' within the meaning of article 2 of the Geneva Convention" ("The Middle-East activities of the ICRC - June 1967/June 1970", in International Review of the Red Cross, nr. 113, August 1970, pp. 426-427).

Both Indonesia and Portugal are parties to the Convention. Indonesia acceded to the Convention on the 30th of September, 1958, Portugal ratified it on the 14th of March, 1961. In our view East Timor remained under the authority of Portugal at the date of the Indonesia's invasion on 7 December 1975. Accordingly, anyone arrested under suspicion of having committed a criminal offence is not only protected by non-derogable human rights but

also by the rights provided under the Humanitarian Laws of War, including those set out in articles 64-76 of the IV Geneva Convention.

We are very concerned that Xanana Gusmão will not be treated in accordance with the minimum requirements of articles 27, 31 and 32 of the IV Geneva Convention. Breaches of these minimum standards could constitute "grave breaches" as defined under articles 146 and 147 of the Fourth Geneva Convention. We urge you to monitor his treatment so that you can advise all the Member States who are signatories to the Geneva Conventions of any breaches so that they can make arrangements to arrest and bring to trial those involved in committing these breaches. This would be in accordance with the practice which Member States were invited to follow in the case of Iraq's occupation of Kuwait (Security Council Resolution 674, of 29 October 1990). We urge you to bring this matter to the attention of the Security Council, where a resolution in the appropriate terms could be passed.

We also respectfully request the exercise of your good offices in obtaining permission from the Indonesian authorities for a delegation of our Platform to visit East Timor.

Yours sincerely,

Pedro Pinto Leite

Pedro Pinto Leite
Secretary-general IPJET